

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 84-013-12-1-4-20024-15
84-013-13-1-4-14338-15
84-013-14-1-4-10135-15
84-013-15-1-4-00001-15
Petitioner: Jack & Judith A. Hawes, LLC
Respondent: Vigo County Assessor
Parcel: 84-02-34-127-003.000-013
Assessment Years: 2012, 2013, 2014 and 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner filed Taxpayer's Notice to Initiate an Appeal (Form 130s) with the Vigo County Assessor challenging the subject property's 2012, 2013, 2014 and 2015 assessments.
2. The Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued determinations on February 11, 2015, for the 2012 and 2013 assessment years lowering the assessments, but not to the level requested by the Petitioner. There is no evidence on the record the PTABOA issued determinations for the 2014 and 2015 assessment years.¹ The Petitioner filed Petitions for Review of Assessment (Form 131s) with the Board for all four years.
3. The Board issued notices of hearing on January 31, 2017.
4. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on March 16, 2017. She did not inspect the property.
5. Jack and Judith Hawes appeared *pro se*. Vigo County reassessment supervisor Michael West appeared for the Respondent. All of them were sworn.

¹ It is not entirely clear if the Petitioner's Form 131s are properly before the Board. However, there is no conclusive evidence on the record to prove they are untimely and this issue was never raised by the Respondent. As a result, the Board will not address the timeliness of the Petitioner's filings with the Board and issue this final determination on the merits.

Facts

6. The property under appeal is located at 5318 North 13th Street in Terre Haute.

7. The current total assessments for each year are as follows:

| Year | Land | Improvements | Total |
|-------------|-------------|---------------------|--------------|
| 2012 | \$40,800 | \$71,100 | \$111,900 |
| 2013 | \$46,200 | \$81,400 | \$127,600 |
| 2014 | \$48,600 | \$85,600 | \$134,200 |
| 2015 | \$49,400 | \$82,600 | \$132,000 |

8. The Petitioner requested the following total assessment:

| Years | Land | Improvements | Total |
|--------------|-------------|---------------------|--------------|
| 2012-2015 | \$39,200 | \$26,800 | \$66,000 |

Record

9. The official record for this matter is made up of the following:

- a) Form 131s with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit 1: Photograph of the subject property’s roof with explanation,
- Petitioner Exhibit 2: Photograph of the subject property’s wall with explanation,
- Petitioner Exhibit 3A: Photograph of the subject property’s office area with explanation,
- Petitioner Exhibit 3B: Another photograph of the subject property’s office area with explanation,
- Petitioner Exhibit 4: Photograph of the subject property’s “headers and walls” with explanation,
- Petitioner Exhibit 5: Photograph of the subject property’s wall with explanation,
- Petitioner Exhibit 6: A list of the subject property’s deficiencies,
- Petitioner Exhibit 7: Photograph of the subject property’s overhead door with explanation,
- Petitioner Exhibit 8: Photograph of a trailer near the subject property with explanation,

Petitioner Exhibit 9: Photograph of the exterior of the subject property with explanation,
Petitioner Exhibit 10: Photograph of the subject property's exterior south wall with explanation,
Petitioner Exhibit 11: Photograph of a "service truck" in front of the subject property with explanation,
Petitioner Exhibit 12: Photograph of the subject property's exterior north wall with explanation,
Petitioner Exhibit 13: Two photographs of the subject property's roof with explanation,
Petitioner Exhibit 14: Two photographs of a hole in the roof of the subject property with explanation,
Petitioner Exhibit 15: An email from Jeffrey L. Reynolds of Rogers Home Improvement to the Petitioner dated October 8, 2015, providing an estimate to replace the roof on the subject property.

2012 appeal

Respondent Exhibit 1: 2011 subject property record card,
Respondent Exhibit 2: 2012 subject property record card,
Respondent Exhibit 3: Geographic Information Systems (GIS) map,
Respondent Exhibit 4: 2012 IncomeWorks Evaluation Report (IncomeWorks) for the subject property with "custom selections,"
Respondent Exhibit 5: Partial copy of the Petitioner's 2012 federal tax returns (CONFIDENTIAL),
Respondent Exhibit 6: Partial copy of the Petitioner's 2013 federal tax returns (CONFIDENTIAL).

2013 appeal

Respondent Exhibit 1: 2013 subject property record card,
Respondent Exhibit 2: 2013 IncomeWorks for the subject property,
Respondent Exhibit 3: 2013 IncomeWorks for the subject property with "custom selections."

2014 appeal

Respondent Exhibit 1: 2014 subject property record card,
Respondent Exhibit 2: 2014 IncomeWorks with "custom selections."

2015 appeal

Respondent Exhibit 1: 2015 subject property record card,
Respondent Exhibit 2: 2015 IncomeWorks with "custom selections."

Board Exhibit A: Form 131s with attachments,
Board Exhibit B: Notices of hearing dated January 31, 2017,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

10. Mr. West objected to the following Petitioner's Exhibits: 1, 2, 3A, 3B, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 14. Mr. West based his objection on the grounds the photographs were taken in 2017 while the appeals at hand are for 2012, 2013, 2014 and 2015. In response Mr. Hawes argued that he "couldn't go back five years and take the pictures." Further, Mr. Hawes stated that he provided pictures that "were taken earlier" at a previous PTABOA hearing. The ALJ took the objection under advisement.
11. Mr. West's objection goes more to the weight of the evidence than its admissibility. Therefore, the objection is overruled and the Petitioner's Exhibits are admitted.
12. Mr. Hawes objected to Mr. West's testimony regarding the "classification" of the subject property as an "auto repair shop" in the Respondent's IncomeWorks report. Mr. West responded by stating "there must not have been a category for semi-trailer repair so the assessing official relied on the auto repair classification." The ALJ took the objection under advisement.
13. Mr. Hawes' objection goes more to the weight of the evidence than its admissibility. Therefore, the objection is overruled and the Respondent's IncomeWorks reports are admitted.
14. The Board notes, however, that the above rulings ultimately have no effect on the Board's final determination.

Contentions

15. Summary of the Petitioner's case:
 - a) The subject property's 2012, 2013, 2014 and 2015 assessments are too high. The building was built in the 1800s in a "blighted area" and was originally used for coal mining. Because the building was "constructed on sand" it is "warping and cracking due to settling." The building has not been "in business" since December 26, 2014. *Jack Hawes argument.*
 - b) Although the building was "partially remodeled" 16 years ago, it has deteriorated rapidly and is in poor condition. The building "should be" demolished but the cost to do so would be "\$30,000 to \$50,000." The property lacks a "functioning well or septic" and also lacks a heating system. *Jack Hawes argument.*

- c) The property is currently in disrepair. The walls need to be repaired to “make them vertical.” There are numerous broken windows. Ceiling tiles have covered the office floor. There is graffiti on the exterior walls. The roof is in need of replacement, but the estimate for its replacement “falls between \$48,000 and \$60,000.” *Jack Hawes testimony; Pet’r Ex. 1, 4, 6, 7, 9, 12, 13, 14, 15.*
- d) As the business has been in financial decline, the property was listed but no offers were made.² One realtor speculated the property should be listed “for under \$100,000” and other realtors “would not even take the listing.” At this time, the Petitioner is just “trying to get rid of the building.” The property is not currently listed, but the Petitioner is “willing to entertain any offers.” *Jack Hawes testimony; Pet’r Ex. 2, 3A, 3B, 5, 7, 8, 10.*
- e) The Respondent “misinterpreted” several figures on the Petitioner’s federal tax return. The figure the Respondent relied on for the “building value” also included equipment and other business assets. The land value relied on by the Respondent includes an additional 10-acre plat the Petitioner owns. Further, the business is incorrectly described as an “auto service” on the IncomeWorks. The Petitioner repaired semi-trailers and because it was a “mobile business” most of the work was not done on the premises. As a result of these errors, the Petitioner is being taxed as if the property is a “decent building.” *Jack Hawes argument (referencing Resp’t Ex. 5, 6).*

16. Summary of the Respondent’s case:

The 2012 assessment

- a) The property is correctly assessed. The increase in the 2012 assessment was a result of a reassessment utilizing updated cost schedules. When the Petitioner filed its 2012 assessment appeal, the PTABOA requested the Petitioner’s income tax returns but ultimately relied on an IncomeWorks report prepared by an assessing official. As a result of the PTABOA hearing, the property’s 2012 assessment was reduced to \$111,900 based on income approach to value. *West argument; Resp’t Ex. 1, 2, 4, 5, 6 (2012).*
- b) In developing the IncomeWorks valuation, the Respondent applied a “poor rating” for the property’s “immediate location,” overall location, access and visibility, condition, design and utility, and quality and appeal. The Respondent also “upped” the property’s expenses to reflect the building’s deteriorated condition. The Respondent listed the building’s classification as an “auto repair,” because no category exists for semi-trailer repair. On the Petitioner’s income tax returns for 2012, the depreciated cost of buildings and other assets is “over \$200,000 and the land is valued at \$25,000.” *West argument; Resp’t Ex. 4, 5 (2012).*

² Mr. Hawes did not state the asking price for the property.

- c) According to the subject property record card, the Respondent has acknowledged the property lacks air conditioning and plumbing and that heat only exists in 50% of the building. Further, the building is depreciated by 80% to account for age. *West testimony; Resp't Ex. 1, 2 (2012)*.

2013, 2014 and 2015 assessments

- d) For the 2013, 2014 and 2015 assessments, the Respondent prepared both income and cost valuation estimates. The lowest value reconciliation was adopted for each year's assessment. For the 2013 assessment, IncomeWorks yielded the lowest amount. While for the 2014 and 2015 assessment, the cost approach to value yielded the lowest calculation. *West testimony, Resp't Ex. 2, 3 (2013, 2014, 2015)*.
- e) The Respondent was unaware the Petitioner's business had closed. *West testimony*.

Burden of Proof

17. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
18. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
19. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
20. Here, the parties agreed that the 2012 assessment increased by more than 5% over the 2011 assessment. Indeed, the total assessed value increased from \$66,000 to \$111,900. The Respondent claims, however, that the assessment for 2012 was based on the income approach to value, and therefore the Petitioner has the burden. The Petitioner did not

argue the Respondent's claim. However, Ind. Code § 6-1.1-15-17.2(d) applies to situations where the previous year's *appeal* was decided using the income capitalization approach, and does not apply where a taxpayer is claiming the burden should shift because the assessment increased by more than 5%. Here, there is no evidence that the property was the subject of an appeal in the prior year. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

21. The burden for the 2013, 2014 and 2015 assessment years will depend on the Board's findings for the immediately preceding year.

Analysis

22. The Respondent failed to make a prima facie case, thus the Board finds for the Petitioner. Ultimately, all years under appeal must be reduced to the 2011 level of \$66,000.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2013 assessment, the valuation date was March 1, 2013. *Id.* For a 2014 assessment, the valuation date was March 1, 2014. *Id.* And for a 2015 assessment, the valuation date was March 1, 2015. *Id.*
 - c) The Board must first consider the 2012 assessment. As explained above, the Respondent had the burden to prove the assessment was correct. In an attempt to accomplish this, the Respondent presented an IncomeWorks analysis and the various adjustments made to the subject property record card to account for deficiencies.
 - d) The Respondent's burden is not merely to explain why the property's assessment increased. Instead, the Respondent must offer probative evidence proving the subject property's market value in use. *See*, Indiana Code § 6-1.1-15-17.2.
 - e) Here, in an effort to support the 2012 assessment, the Respondent relied on an income approach derived from IncomeWorks. This report purports to apply a direct capitalization income approach to the subject property.

- f) For the 2012 assessment the Respondent's IncomeWorks report indicates a rental income of \$9.00 per square foot. The report failed to include any basis for the selection of that figure. It seems the basis for selecting that amount is an "automobile repair shop" classification. Additionally, it is not clear how the Respondent developed its "custom selection" for expenses. In this particular case, it is unclear whether the income approach and the data the Respondent relied on is relevant. The majority of the data referred to by both parties appears to be business-related rather than property-related. The goal of assessing is to value the real estate, not the business.
- g) As part of making a case, "it is the taxpayer's duty to walk the [Board] through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). This requirement applies equally to an assessor bearing the burden. Here, the record fails to provide any foundation for the selection of the factors discussed, especially the building's use. Additionally, there is no evidence on record to indicate the report was prepared according to generally accepted appraisal principles.
- h) While IncomeWorks may be a tool for delivering a calculation of value, the Respondent failed to prove that value is relevant or credible in this case.
- i) For these reasons, the Respondent did not offer enough probative evidence to convince the Board that the 2012 assessment is correct. Therefore, the Petitioner is entitled to have its assessment returned to its 2011 value of \$66,000. Because the Petitioner requested the assessment be reduced to its 2011 level, this ends the Board's inquiry for the 2012 assessment year.
- j) Accordingly, the burden of proof remains with the Respondent for the 2013 assessment year. For 2013, the Respondent offered the same theory and arguments, and similar evidence as it did for 2012. For the same reasons as discussed above, the Respondent failed to offer enough probative evidence to convince the Board that the 2013 assessment is correct. Because the Respondent failed to prove its case, the 2013 assessment reverts back to the 2012 level of \$66,000 and because the Petitioner did not request a lower amount, this ends the Board's inquiry for the 2013 assessment.
- k) Accordingly, the burden of proof remains with the Respondent for the 2014 assessment year. For the 2014 assessment year, the Respondent relied on the cost approach calculations shown on the subject property record cards in valuing the property. While an IncomeWorks report was also developed for 2014, the resulting calculation from this report was higher than the calculation from the cost approach. Nevertheless, if it was the Respondent's intention to offer the income report to support the 2014 assessment, it is not probative for the same reasons as stated above.
- l) As for the subject property record card, without any additional support, it is not probative of the 2014 market value in use. In using the assessed value from the

property record card to support the assessment, the Respondent is essentially relying on the Guidelines to arrive at an assessed value. As the tax court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).

- m) For these reasons, the Respondent failed to convince the Board that the 2014 assessment is correct. Therefore, the Petitioner is entitled to have its assessment returned to its 2013 value of \$66,000. Because the Petitioner did not request a lower amount, this ends the Boards inquiry for the 2014 assessment.
- n) Finally, the burden of proof remains with the Respondent for the 2015 assessment year. For 2015, the Respondent offered the same theory, arguments, and similar evidence as it did for 2014. For the same reasons as discussed above, the Respondent failed to convince the Board that the 2015 assessment is correct. Because the Respondent failed to prove its case, the 2015 assessment reverts back to the 2014 level of \$66,000 and because the Petitioner did not request a lower amount, this ends the Boards inquiry.

Conclusion

- 23. The Respondent had the burden of proving the 2012 assessment was correct, but failed. Because the Respondent failed to meet its burden in 2012, the Respondent also had the burden in 2013, 2014 and 2015, but again failed to meet that burden.

Final Determination

In accordance with these findings and conclusions, the 2012, 2013, 2014 and 2015 assessments must be reduced to \$66,000.

ISSUED: June 14, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.